

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

ROBERT A LOPEZ, ) Case No. ED CV 16-00297-AS  
Plaintiff, )  
v. )  
CAROLYN W. COLVIN, )  
Acting Commissioner of the )  
Social Security Administration, )  
Defendant. )

)  
)

**MEMORANDUM OPINION AND**  
**ORDER OF REMAND**

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED  
that this matter is remanded for further administrative action  
consistent with this Opinion.

## PROCEEDINGS

On February 18, 2016, Plaintiff filed a Complaint seeking review of the denial of his applications for Disability Insurance Benefits and Supplemental Security Income. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate

1 Judge. (Docket Entry Nos. 11-12). On June 27, 2016, Defendant filed an  
2 Answer along with the Administrative Record ("AR"). (Docket Entry Nos.  
3 14-15). The parties filed a Joint Position Statement ("Joint Stip.") on  
4 September 8, 2016, setting forth their respective positions regarding  
5 Plaintiff's claims. (Docket Entry No. 16).

6

7 The Court has taken this matter under submission without oral  
8 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures In Social  
9 Security Case," filed February 22, 2016 (Docket Entry No. 9).

10

11 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

12

13 On April 30, 2012, Plaintiff, formerly employed as a clerical  
14 administrator for property management/banks/law firms, a front desk  
15 clerk at a hotel, an apartment property manager, and a telemarketer (see  
16 AR 38-39, 283, 301-07), filed applications for Disability Insurance  
17 Benefits and for Supplemental Security Income, alleging a disability  
18 since September 25, 2010. (See AR 249-55, 258-64). On January 23, 2014,  
19 the Administrative Law Judge ("ALJ"), Nancy Lisewiski, heard testimony  
20 from Plaintiff and vocational expert Troy Scott. (See AR 57-70). On  
21 April 14, 2014, the ALJ issued a decision denying Plaintiff's  
22 applications. (See AR 16-30). The ALJ noted the September 24, 2010  
23 decision of an administrative law judge finding that Plaintiff was not  
24 disabled from August 28, 2007 through September 24, 2010 (see AR 75-81),  
25 found that Plaintiff had not rebutted the presumption of continuing  
26 nondisability with "changed circumstances" material to the disability  
27 determination, and consequently, based on the principles of res  
28 judicata, adopted the findings of the prior administrative judge. (AR  
16). After determining that Plaintiff had severe impairments --

1 "coronary artery disease; morbid obesity; hypertension; diabetes; and  
 2 low back pain" (AR 19)<sup>1</sup> --, the ALJ found that Plaintiff had the residual  
 3 functional capacity ("RFC")<sup>2</sup> to perform light work<sup>3</sup> with the following  
 4 limitations: sitting and standing at will; no more than occasional  
 5 bending, stooping crouching, crawling, balancing, kneeling, and climbing  
 6 ramps; no walking on uneven surfaces; no climbing ladders, ropes or  
 7 scaffolds; and no exposure to extreme cold and vibrations. (AR 22-28).  
 8 Finding that Plaintiff was capable of performing his past relevant work,  
 9 the ALJ found that Plaintiff was not disabled within the meaning of the  
 10 Social Security Act. (AR 28-29).

11  
 12 Plaintiff requested that the Appeals Council review the ALJ's  
 13 decision. (AR 246-47). The request was denied on December 29, 2015.  
 14 (AR 1-6). The ALJ's decision then became the final decision of the  
 15 Commissioner, allowing this Court to review the decision. See 42 U.S.C.  
 16 §§ 405(g), 1383(c).

17  
 18 **PLAINTIFF'S CONTENTIONS**

20 Plaintiff alleges that the ALJ erred in failing to properly: (1)  
 21 consider Plaintiff's testimony and make proper credibility findings; and  
 22

---

23  
 24 <sup>1</sup> The ALJ found that Plaintiff's mental impairments -- mood  
 disorder and depression -- were nonsevere. (See AR 19-22).

25 <sup>2</sup> A Residual Functional Capacity is what a claimant can still do  
 26 despite existing exertional and nonexertional limitations. See 20  
 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

27 <sup>3</sup> "Light work involves lifting no more than 20 pounds at a time  
 28 with frequent lifting or carrying of objects weighing up to 10 pounds." 20 C.F.R. §§ 404.1567(b), 416.967(b).

1 (2) determine whether Plaintiff was capable of performing past relevant  
2 work. (See Joint Stip. at 3-7, 11-18).

3

4 **DISCUSSION**

5

6 After consideration of the record as a whole, the Court finds that  
7 Plaintiff's first claim of error warrants a remand for further  
8 consideration. Since the Court is remanding the matter based on  
9 Plaintiff's first claim of error, the Court will not address Plaintiff's  
10 second claim of error.

11

12 **A. The ALJ Did Not Properly Assess Plaintiff's Credibility**

13

14 Plaintiff asserts that the ALJ failed to articulate legitimate  
15 reasons to find his testimony and statements not fully credible. (See  
16 Joint Stip. at 3-7). Defendant asserts that the ALJ provided proper  
17 reasons for finding Plaintiff not fully credible. (See Joint Stip. at  
18 7-11).

19

20 Plaintiff made the following statements in an undated, unsigned  
21 "Function Report - Adult" (see AR 345-52)<sup>4</sup>:

22

23 He lives alone in an apartment. His day consists of  
24 staying in bed, mostly watching movies, sleeping 5 to 9 hours,  
25 and going to the market when he has food stamps. He does not

26

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27 <sup>4</sup> According to the Court Transcript Index at the beginning of  
28 the Administrative Record, Plaintiff's "Function Report-Adult" was dated  
July 16, 2013. (See Court Transcript Index at 2).

allow any visitors, and he tries to avoid public contact. He takes care of his pets, feeding them in the morning and cleaning the litter box at night (if he can get out of bed). Prior to his impairments, he was able to work, where he cooked, did housekeeping, sold and did marketing. His impairments, particularly lower back sciatica, affects his sleep. He is depressed and sad. He is in pain about 80 percent of the time. He takes Flexall for pain, but it makes him sleepy and does not relieve the pain. (See AR 345-46, 348-49).

He has no problem with his personal care, does not need any special reminders to take care of his personal needs and grooming, and does not need help or reminders taking medicine. (See AR 347).

Once or twice a day he prepares his own meals, anything that does not require him to stand more than 1 to 2 minutes (if he feels pain from standing, he must sit for at least 10 minutes). His impairments have limited his ability to eat spicy foods. (See id.).

He does not do chores because of his pain. He hires someone to clean and vacuum and dust. He does not do any yard work because he does not have a yard. (See AR 347-48).

When he goes out, he drives a car. He shops in stores or by computer. When he goes shopping at the market, he needs help because he cannot carry much weight. (See AR 348).

He can pay bills (online), count change, handle a savings account and use a checkbook. (See AR 348-49).

He does not have hobbies and interests, and he does not go places on a regular basis, because he is in pain and is on a tight budget. He does not socialize with others because he does want to be a burden and/or to make others feel sad. (See AR 349-50).

His impairments affect his lifting, squatting, bending, standing, reaching, walking, sitting, kneeling, stair climbing, completing tasks, concentration, understanding, following instructions, and getting along with others. (See AR 350).

He can walk 10 minutes before needing to rest, and can resume walking after resting for 20 minutes. His ability to pay attention and to finish what he starts depends on his level of interest. He can follow written instructions, as long as he does not have to stand for too long. When asked how well he follows spoken instructions and gets along with authority figures, he stated he avoids public contact. He has not been fired or laid off from a job because of problems getting along with other people. (See AR 350-51).

1           He does not handle stress well; he goes into a rage and  
2 yells at people. He does not handle changes in his routine  
3 very well. His unusual fears are feeling like he is being  
4 punished and going toward his death. He wears  
5 glasses/contacts. (See AR 351).

6  
7           Plaintiff testified at the January 23, 2014 administrative hearing  
8 as follows (see AR 61-67):  
9

10           He is 5'11" tall and weighs 340 pounds. He drove to the  
11 hearing, less than a half mile drive. He is not able to work  
12 because of a painful sciatica and because of issues with his  
13 blood sugar level. He receives financial support from his  
14 father. (See AR 61-62, 66-67).

15  
16           His sciatica is inflamed and causes him great pain. He  
17 attempts to relieve the pain by shifting positions. The only  
18 way he can really obtain relief is to lay down in bed and put  
19 a heat paid on his left buttocks. (See AR 66).  
20

21           He has had Type 1 diabetes since he was a juvenile; he  
22 has injected himself with insulin since he was 16 years old.  
23 Eating breakfast, especially a big breakfast, causes his blood  
24 sugar level to shoot dangerously high, causing him to fall  
25 asleep. He gives himself Humalog, which combined with regular  
26 insulin, brings his blood sugar level down in two to three  
27 hours. His blood sugar level runs from 200 to 400, and  
28 sometimes higher. He follows a diabetic diet, whenever

1           possible. When asked whether he tested his blood sugar level  
2           that morning, he testified he ran out of test strips the night  
3           before, but that he has his meter with him and he is going to  
4           go pick up test strips at the pharmacy that morning. (See AR  
5           62, 64-66).

6  
7           His gall stone problem is in remission. Although he had  
8           abdominal pain in November 2013, he no longer has such pain.  
9           (See AR 62).

10  
11          He takes Methocarbamol (Robaxin) for back pain,  
12          Carvedilol and Amlodipine for high blood pressure, Plavix for  
13          the stents (in 2009 he had two stents placed because he was in  
14          risk of a heart attack), Bezdopril and Lipitor for cholesterol,  
15          Famotidine (Zyrtec) for heartburn, Wellbutrin for depression  
16          (he is in mental health treatment), Humulin N (three times a  
17          day) and Humalog (3 to 4 times a day) for his diabetes. (See  
18          AR 62-65).

19  
20          The medications make him drowsy and cause him to sleep in  
21          the middle of the day every day. Every day he naps 2 to 4  
22          hours to relieve the pain. (See AR 65).

23  
24          After summarizing Plaintiff's testimony at the hearing (see AR 23),  
25          the ALJ addressed Plaintiff's credibility as follows:

26  
27          I find the claimant's allegations concerning the  
28          intensity, persistence and limiting effects of his symptoms

1       are not fully credible. The allegations of debilitating and  
2       limiting symptoms related to back pain, diabetes, and high  
3       blood pressure were inconsistent with the objective medical  
4       evidence, which indicates an attempt by the claimant to  
5       exaggerate the severity of his symptoms.

6  
7       The claimant attempted to minimize his daily activities  
8       and alleged he slept two to four hours during the middle of  
9       the day due to side effects from his medications. However, as  
10      mentioned above, the claimant has described activities of  
11      daily living, which were not limited to the extent one would  
12      expect, given the complaints of disabling symptoms and  
13      limitations. During a consultative psychological examination,  
14      the claimant reported he is able to do household chores, run  
15      errands, shop, cook, and dress and bathe himself (Ex. B4F,  
16      p.5). In addition, the claimant testified he drove himself to  
17      the hearing. I find the claimant's ability to participate in  
18      such activities undermines the credibility of the claimant's  
19      allegations of disabling functional limitations.

20  
21      The claimant testified he is unable to control his blood  
22      sugar levels and he claimed his levels become so high that he  
23      falls asleep and must take time to medication [sic] himself to  
24      reduce his symptoms. Despite his allegations, however, there  
25      is evidence in the medical record demonstrating the claimant's  
26      unwillingness to properly monitor his blood sugar levels as  
27      recommended by his treating physicians. At the hearing, the  
28      claimant acknowledge he failed to test his blood sugar levels

1       that morning. Further, despite numerous instructions to do  
2 so, the claimant failed several times to present a log of his  
3 blood glucose levels during medical treatments for complaints  
4 of diabetes (Ex. B7F, pp. 12-15, 29-33). This demonstrates a  
5 possible unwillingness to do what is necessary to improve his  
6 condition. It may also be an indication that his symptoms are  
7 not as severe as he purports.

8  
9       In addition, the record reveals that the claimant failed  
10 to follow-up on recommendations made by the treating doctor,  
11 which further suggests that the symptoms may not have been as  
12 serious as has been alleged. The claimant testified he  
13 follows the recommended diabetic diet, but only whenever  
14 possible. During treating [sic] in August 2013, the claimant  
15 acknowledged he did not strictly adhere to a diabetic diet,  
16 which had resulted in significant weight gain (Exh. B7F, p.  
17 9). Further, the claimant cancelled or failed to show up for  
18 doctor appointments on a number of occasions (Exhs. B6F, pp.  
19 1, 75, 78, 83). In addition, the record contains clear  
20 evidence that the claimant has consciously attempted to  
21 minimize medical treatment and maintain physical symptoms in  
22 order to increase the chance of obtaining benefits. Notably,  
23 in June 2013 at which time the claimant's diabetes was  
24 reported as improving, he expressed concern about receiving  
25 specialized endocrinology treatment due to the probability  
26 that he diabetes would become controlled resulting in his  
27 inability for him to obtain disability benefits through Social  
28 Security (Exh. B7F, p. 12). Accordingly, I find the

1       credibility of the claimant's allegations regarding the  
2       severity of his symptoms and limitations is greatly diminished  
3       because he expressly stated an unwillingness to do what is  
4       necessary to improve his condition and his actions confirm  
5       this sentiment.

6  
7       \* \* \* \* \*

8  
9       After careful consideration of the evidence, I find that  
10      the claimant's medically determinable impairments could  
11      reasonably be expected to cause the alleged symptoms; however,  
12      the claimant's statements concerning the intensity,  
13      persistence and limiting effects of these symptoms are not  
14      entirely credible for the reasons explained in this decision.

15  
16 (AR 23-24).

17  
18       A claimant initially must produce objective medical evidence  
19      establishing a medical impairment reasonably likely to be the cause of  
20      the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.  
21      1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a  
22      claimant produces objective medical evidence of an underlying impairment  
23      that could reasonably be expected to produce the pain or other symptoms  
24      alleged, and there is no evidence of malingering, the ALJ may reject the  
25      claimant's testimony regarding the severity of his pain and symptoms  
26      only by articulating specific, clear and convincing reasons for doing  
27      so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir. 2015)(citing  
28      Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007)); see also

1     Smolen v. Chater, supra; Reddick v. Chater, 157 F.3d 715, 722 (9th Cir.  
 2     1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997).  
 3     Because the ALJ does not cite to any evidence in the record of  
 4     malingering, the "clear and convincing" standard stated above applies.  
 5

6                 Here, the ALJ failed to provide clear and convincing reasons for  
 7     finding that Plaintiff's testimony about the intensity, persistence and  
 8     limiting effects of his symptoms was not fully credible.<sup>5</sup>  
 9

10               First, the ALJ failed to "specifically identify 'what testimony is  
   11     not credible and what evidence undermines [Plaintiff's] complaints.'" Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007) (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995)); see also Smolen v. Chater, supra, 80 F.3d at 1284 ("The ALJ must state specifically what symptom testimony is not credible and what facts in the record lead to that conclusion"). Indeed, the ALJ did not even discuss the statements made by Plaintiff in his Function Report. Moreover, the ALJ did not address Plaintiff's credibility with respect to his testimony about his sciatica.  
 20

21               Second, the ALJ's partial discrediting of Plaintiff's testimony  
 22     based on his ability to perform certain daily activities, such as doing  
 23     household chores, running errands, shopping cooking, dressing, bathing  
 24     himself, and driving himself to the hearing, was not a clear and  
 25     convincing reason. See Vertigan v. Halter, 260 F.3d 1044, 1050 (9th

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26               <sup>5</sup> The Court will not consider reasons for finding Plaintiff not  
 27     fully credible (see Joint Stip. at 10) that were not given by the ALJ in  
 28     the Decision. See Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir.  
 2001); SEC v. Chenery Corp., 332 U.S. 194, 196 (1947).

1 Cir. 2001) ("[T]he mere fact that a plaintiff has carried on certain  
2 daily activities . . . does not in any way detract from her credibility  
3 as to her overall disability. One does not need to be 'utterly  
4 incapacitated' in order to be disabled."); Reddick v. Chater, supra  
5 ("Only if the level of activity were inconsistent with the Claimant's  
6 claimed limitations would these activities have any bearing on  
7 Claimant's credibility.").

8

9       The ALJ improperly relied on Plaintiff's statements about his  
10 performance of certain daily activities in a psychological evaluation  
11 report dated September 18, 2012 (see AR 530) which were made  
12 approximately eleven months prior to Plaintiff's statements in his  
13 August 16, 2013 Function Report, and approximately seventeen months  
14 prior to Plaintiff's testimony at the January 23, 2014 administrative  
15 hearing. Contrary to the ALJ's implied assertion, Plaintiff's testimony  
16 that he needed to sleep two to four hours in the middle of the day  
17 because of his medications (see AR 65) was not necessarily inconsistent  
18 with Plaintiff's statements/testimony about his ability to perform such  
19 daily activities. It is not clear from the record, and the ALJ did not  
20 attempt to ascertain, the specifics, and/or extent, of Plaintiff's  
21 abilities to do such daily activities. Therefore, the degree to which  
22 Plaintiff could perform such daily activities may not have been  
23 inconsistent with his testimony regarding his limitations. See Reddick  
24 v. Chater, supra; see also Morgan v. Commissioner of Social Sec. Admin.,  
25 169 F.3d 595, 600 (9th Cir. 1999) ("If a claimant is able to spend a  
26 substantial part of his day engaged in pursuits involving the  
27 performance of physical functions that are transferable to a work  
28 setting, a specific finding as to this fact may be sufficient to

1 discredit a claimant's allegations."). Moreover, to the extent that the  
2 ALJ relied on Plaintiff's testimony that he drove to the hearing, the  
3 ALJ did not appear to take into account Plaintiff's testimony that he  
4 had to drive only one-half of a mile (see AR 61).

5

6 Third, although an ALJ may discount a claimant's credibility based  
7 on an "unexplained or inadequately explained failure to seek treatment  
8 or to follow a prescribed course of treatment," Tommasetti v. Astrue,  
9 533 F.3d 1035, 1039 (9th Cir. 2008); Bunnell v. Sullivan, 947 F.2d 341,  
10 346 (9th Cir. 1991), it is not clear whether the ALJ considered  
11 Plaintiff's explanation for why he did not test his blood sugar levels  
12 the morning of the hearing, namely, that he had run out of test strips  
13 the night before (see AR 62). See Social Security Ruling 16-3p, 2016 WL  
14 1119029, \*9 (March 16, 2016) (". . . [I]f the frequency or extent of the  
15 treatment sought by an individual is not comparable with the degree of  
16 the individual's subjective complaints, or if the individual fails to  
17 follow prescribed treatment that might improve symptoms, we may find the  
18 alleged intensity and persistence of an individual's symptoms are  
19 inconsistent with the overall evidence of record. We will not find an  
20 individual's symptoms inconsistent with the evidence in the record on  
21 this basis without considering possible reasons he or she may not comply  
22 with treatment or seek treatment consistent with the degree of his or  
23 her complaints. We may need to contact the individual regarding the  
24 lack of treatment or, at an administrative proceeding, ask why he or she  
25 has not complied with or sought treatment in a manner consistent with  
26 his or her complaints.").

27 In addition, while the ALJ properly noted that on August 7, 2013  
28 and April 13, 2014, Plaintiff did not bring logs of his blood sugar

1 levels, despite previous encouragement to do so (see AR 1027-29, 1046),  
2 it does not appear that Plaintiff was asked at the time of those  
3 appointments or at the time of the administrative hearing why he did not  
4 bring the logs. Moreover, while the ALJ properly noted the statements  
5 in the August 16, 2013 report about Plaintiff's lack of strict adherence  
6 to a diabetic diet and Plaintiff's weight gain (see AR 1024 ["Pt.  
7 reports that he is managing his diabetes but then he notes that he does  
8 not adhere strictly to a diabetic diet and that he has gained weight  
9 (from 294 to 307#)."], as well as Plaintiff's hearing testimony that he  
10 follows the diabetic diet "whenever possible" (see AR 65), it does not  
11 appear that at the time of the August 2013 appointment Plaintiff was  
12 asked why he was not strictly adhering to a diabetic diet, or that at  
13 the time of the administrative hearing Plaintiff was asked about why in  
14 August 2013 he was not strictly adhering to a diabetic diet or about  
15 what he meant when he testified he followed the diabetic diet "whenever  
16 possible." Finally, although there were medical records concerning  
17 Plaintiff's cancellations of, or failure to show up to, medical  
18 appointments on February 6, 2012 (see AR 948 [notation that appointment  
19 not kept, no indication about nature of appointment]), February 26, 2012  
20 (see AR 943 [notation that appointment not kept, no indication about  
21 nature of appointment]), March 13, 2012 (see AR 940 [notation that  
22 appointment not kept, no indication about nature of appointment] and  
23 February 13, 2013 (see AR 866 [notation that pharmacy appointment not  
24 kept, rescheduled for March 4, 2013])), it does not appear that at the  
25 administrative hearing Plaintiff was asked about why he cancelled or  
26 failed to show up for those appointments. Indeed, the record appears to  
27 reflect that Plaintiff attended or kept the most of his diabetes-related  
28 appointments (see e.g., AR 950-52, 957 [December 6, 2011], 949, 953-54

1 [January 13, 2012], 946-47 [February 8, 2012], 939 [March 20, 2012],  
2 1044-48 [April 3, 2013], 938 [April 23, 2012], 937 [May 27, 2012], 888-  
3 98 [November 6, 2012], 867-71, 873-77 [January 29, 2013]), 1027-30  
4 [August 7, 2013], 1016-17 [October 4, 2013], 1022-23 [September 10,  
5 2013], 1020-21 [September 17, 2013], 1018-19 [November 19, 2013]).

6

7 Fourth, to the extent that the ALJ partially discredited  
8 Plaintiff's credibility because of statements expressing concern that  
9 endocrinology treatment would impact his ability to obtain disability  
10 benefits (see AR 1027 [notations in August 7, 2013 notes from the  
11 diabetic clinic at Riverside County Medical Regional Center, as follows:  
12 "Pt came to FCC DM Clinic today as Walk-in stating he's concerned if he  
13 sees Endocrinology there's a probability his DM will become controlled  
14 and he will be unable to get disability (SSSI). Pt states he's been  
15 working on getting disability for some time and now that he's 50 (last  
16 2 weeks greater likelihood. Requesting disability paperwork (incl for  
17 CLBP) be completed today by DM Clinic."), those statements did not  
18 necessarily support the ALJ's assertion that "[Plaintiff] has  
19 consciously attempted to minimize medical treatment and maintain  
20 physical symptoms in order to increase the chance of obtaining benefits"  
21 (AR 24). Simply because Plaintiff expressed concern on August 7, 2013  
22 (approximately three years after the alleged onset of disability date,  
23 and approximately 15 months after the filing of Plaintiff's  
24 applications) that his improved health might impact his ability to  
25 obtain disability benefits does not mean or show that throughout the  
26 period at issue (beginning in September 25, 2010) he did not act to  
27 improve his physical health, particularly with respect to his diabetes.  
28 At the hearing, the ALJ did not ask Plaintiff to explain his statements.

1 Moreover, those statements were not relevant to Plaintiff's testimony  
2 with respect to issues with his lower back.

3

4 Fifth, although the ALJ also found that there was a lack of  
5 objective medical evidence supporting Plaintiff's testimony concerning  
6 his symptoms and limitations, the lack of supporting objective medical  
7 evidence cannot, by itself, support an adverse credibility finding. See  
8 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001); Tidwell v.  
9 Apfel, 161 F.3d 599, 602 (9th Cir. 1998).

10

11 **B. Remand Is Warranted**

12

13 The decision whether to remand for further proceedings or order an  
14 immediate award of benefits is within the district court's discretion.  
15 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
16 useful purpose would be served by further administrative proceedings, or  
17 where the record has been fully developed, it is appropriate to exercise  
18 this discretion to direct an immediate award of benefits. Id. at 1179  
19 ("[T]he decision of whether to remand for further proceedings turns upon  
20 the likely utility of such proceedings."). However, where, as here, the  
21 circumstances of the case suggest that further administrative review  
22 could remedy the Commissioner's errors, remand is appropriate. McLeod  
23 v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Harman v. Apfel, supra,  
24 211 F.3d at 1179-81.

25

26 Since the ALJ failed to properly assess Plaintiff's credibility,  
27 remand is appropriate. Because outstanding issues must be resolved  
28 before a determination of disability can be made, and "when the record

1 as a whole creates serious doubt as to whether the [Plaintiff] is, in  
2 fact, disabled within the meaning of the Social Security Act," further  
3 administrative proceedings would serve a useful purpose and remedy  
4 defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.  
5 2014)(citations omitted).<sup>6</sup>

6

7 **ORDER**

8

9 For the foregoing reasons, the decision of the Commissioner is  
10 reversed, and the matter is remanded for further proceedings pursuant to  
11 Sentence 4 of 42 U.S.C. § 405(g).

12

13 LET JUDGMENT BE ENTERED ACCORDINGLY.

14

15 DATED: January 5, 2017

16 \_\_\_\_\_ /s/  
17 ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE

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23<sup>6</sup> The Court has not reached any other issue raised by Plaintiff  
24 except insofar as to determine that reversal with a directive for the  
immediate payment of benefits would not be appropriate at this time.  
25 "[E]valuation of the record as a whole creates serious doubt that  
Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,  
26 1021 (2014). Accordingly, the Court declines to rule on Plaintiff's  
claim regarding the ALJ's error in finding that Plaintiff was capable of  
performing past relevant work (see Joint Stip. at 11-18). Because this  
matter is being remanded for further consideration, this issue should  
also be considered on remand.